

### REMARKS

Favorable reconsideration by the Examiner and allowance of all claims as now presented are respectfully solicited in light of the above amendments and the accompanying remarks.

Claims 1-19 have been rejected under 35 U.S.C. § 112, first paragraph, with the Examiner contending that Applicant does not teach "non-frozen". Although the specification as originally filed did not use the identical term "non-frozen", this concept is fully supported by the specification as filed, in particular, at page 5, lines 16-21 where it is stated that the product is stored in a non-congealed state at a temperature lying in the range of 2°C to 8°C. This temperature is obviously above the freezing point (0°C), and the product consequently would be noncongealed and therefore "non-frozen". To further clarify this point and to provide literal support for the term "non-frozen", this paragraph has been amended. The insertion of the term "non-frozen" is fully supported by the specification for the reasons noted above and does not constitute new matter.

Claims 1-19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Burt in view of Winton. Reconsideration by the Examiner and withdrawal of this rejection are requested.

Both Anderson and Burt are concerned with producing frozen confections. The confections retain their shape only if they are kept frozen. The present invention, by contrast, is concerned with making molded cheese or non-frozen milk products rather than frozen confections. There is no disclosure or suggestion of making a molded cheese or a molded non-frozen milk product.

The Examiner contends that the claims differ over the prior art only as to the composition of the product, and points to Winton for disclosing the conventional composition of cheese and ice cream. However, Winton also fails to teach or suggest a molded cheese product. Specifically, Winton teaches only the conventional composition of cheese. There is no suggestion of a molded cheese product. Consequently, the combination of Winton with Anderson and Burt fails to teach or make obvious making a molded cheese product. Winton also fails to teach or suggest a molded non-frozen milk product. Consequently, the combination of

Winton, Burt and Anderson still fails to teach or suggest making a non-frozen milk product as claimed. Simply stated, the prior art relied upon lacks any teaching or suggestion of a molded cheese product or a molded non-frozen milk product, and therefore cannot properly support a rejection.

Claim 1 has been amended to further distinguish over Anderson and Burt, which are concerned only with a frozen confection, which is frozen throughout. According to Claim 1, the melt is cooled to cause only a peripheral layer of the melt to congeal. As such, the interior portion of the product would be non-congealed, i.e. non-frozen. Note that in the examples and in the description, the products are described as being suitable for storage between 2°C and 8°C, which is clearly above the freezing point.

The present invention makes it possible to produce a molded dairy product that heretofore could not be made because the product was not moldable. In particular, it was not possible to unmold the product. According to the present invention, a congealed peripheral layer is formed and a surface region of this congealed peripheral layer is reheated in order to soften it for unmolding. The congealed peripheral layer provides mechanical strength to the product while it is unmolded. With a congealed peripheral layer as claimed, it is possible to provide a temporary mechanical cohesion to the product for unmolding. Thereafter, the product will retain its shape. See page 4, line 31 and page 5, line 3.

For the reasons noted, the prior art fails to teach or suggest the above-noted aspects of Applicants' method as defined in Claim 1. The prior art also fails to teach or suggest the features set forth in the claims that are dependent from Claim 1.

The prior art also fails to teach or suggest a product as defined in Claim 17, or the claims that are dependent from Claim 17. While the Examiner points to Winton for teaching the composition of conventional cheese, Winton does not teach or suggest a molded creamy or crumbly soft cheese product of the specified composition of dry extract content and fat content, nor does Winton teach a molded, non-frozen milk product of the specified composition. Consequently, the combination of Winton with Anderson and Burt also fails to teach Applicants' claimed invention.

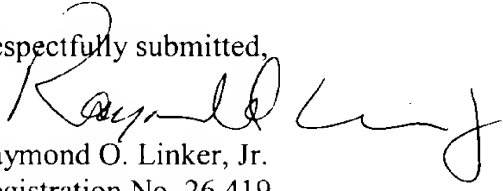
New dependent Claim 20 further distinguishes the product over the prior art in that it clearly recites that the product is in a non-congealed state at a temperature in the range of 2°C to 8°C and is held together by a coating. This aspect of Applicant's invention is nowhere taught or suggested in the cited prior art.

New independent Claim 21 and dependent Claim 22 further distinguish Applicant's invention over the cited prior art. These claims are specific to a method of making a molded cheese product. As previously noted, neither Anderson nor Burt nor Winton teach or suggest such a product or method. The claims recite a unique combination of casting, cooling, reheating, unmolding, coating and storing steps. The combination of method steps recited in these claims is nowhere taught or rendered obvious by the prior art of record.

For the reasons noted above, these claims should be in condition for immediate allowance.

In view of the foregoing comments and amendments, it is submitted that all of the claims of record are now in condition for immediate allowance. Reconsideration by the Examiner and formal notification of the allowance of all claims are earnestly solicited.


Respectfully submitted,

  
Raymond O. Linker, Jr.  
Registration No. 26,419

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111  
CLT01/4591138v1

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, Washington, DC 20231, on May 13, 2003.

  
Janet F. Sherrill